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OFFICE OF PETITIONS

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|---------------------------------|---|--------------------------|
| In re Application of | : | |
| Tupper, et al. | : | DECISION REFUSING STATUS |
| Application No.: 10/804,717 | : | UNDER 37 CFR 1.47(a) |
| Filed: March 29, 2004 | : | |
| Attorney Docket No. STE01 P1167 | : | |
| For: PEDESTAL SYSTEM | : | |

This is a decision on the petition under 37 CFR 1.47(a), filed September 29, 2004 (certificate of mailing date September 27, 2004).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on March 29, 2004 without an executed oath or declaration. Accordingly, on June 2, 2004, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on September 29, 2004 (certificate of mailing date September 27, 2004), a petition for a two month extension of time and required fee, a declaration executed by 9 of 10 joint inventors, the surcharge, the petition fee, and the instant petition were filed. The petition and accompanying exhibits establish that the application papers were mailed to non-signing inventor John L. McCrackin was mailed the application papers, but did not respond to numerous requests that he execute and return the enclosed declaration.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (2) above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration contains an noninitialed, nondated alteration to Inventor DuVall's residence. 37 CFR 1.52(c) states that "[a]ny interlineation,

erasure, cancellation or other alteration of the application papers filed should be made on or before the signing of the accompanying oath or declaration pursuant to 1.63....” This includes the oath or declaration. The Office will not consider whether noninitialed and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP 605.04(a).

Fortunately, the deficiencies or inaccuracies relate to a signing inventor. Thus, pursuant to 37 CFR 1.67(a)(2), Inventor DuVall can correct his information on a supplemental declaration identifying the entire inventive entity and listing all information for them, but signed only by him.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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Post Office Box 1450
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220 20th Street S.
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Telephone inquiries should be directed to the undersigned at (571) 272-3230.



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for Patent Examination Policy